Office - Supreme Court, U. S.
FILED
DEC 6 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

## No. 631

In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Debtor.

ISRAEL A. ABRAMS, et al., etc.,

*Petitioners,*

vs.

HENRY A. SCANDRETT, et al.,

*Respondents.*

**MOTION FOR LEAVE TO FILE A CERTIFIED COPY OF THE OPINION OF THE SEVENTH CIRCUIT IN THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC REORGANIZATION IN CONNECTION WITH POINT V OF THE PETITION.**

MEYER ABRAMS,
*Attorney for Petitioners.*

Dated at Chicago, Illinois,
December 5, 1941.

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

---

## No. 631

---

In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Debtor.

---

ISRAEL A. ABRAMS, et al., etc.,

*Petitioners,*

vs.

HENRY A. SCANDRETT, et al.,

*Respondents.*

---

**MOTION FOR LEAVE TO FILE A CERTIFIED COPY OF THE OPINION OF THE SEVENTH CIRCUIT IN THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC REORGANIZATION IN CONNECTION WITH POINT V OF THE PETITION.**

---

Now comes ISRAEL A. ABRAMS, et al., Petitioners, and ask leave to file a certified copy of the Opinion of the Seventh Circuit filed on December 4, 1941, to be considered in connection with the Petition for Rehearing and with Point V of the Petition (pp. 31-36).

MEYER ABRAMS,
*Counsel for Petitioners.*

## SUGGESTIONS IN SUPPORT OF MOTION.

Since the filing of the Petition for Rehearing the Seventh Circuit *reversed the entire Reorganization Plan* and remanded it to the Interstate Commerce Commission. This may result in a different Plan. We argued in the Petition (pp. 31-36) that fees for services to attorneys and expenses to parties are allowable under section 77 even if they were not beneficial to the Reorganization Plan, and distinguished section 77 from section 77-B. The decision in the instant case adopted the view that no fees for services may be allowed under section 77 unless they were beneficial to the Reorganization Plan. **Inasmuch as the entire Reorganization Plan has now been reversed, neither the Commission nor the Court could say whether any of the parties are entitled to any compensation until the new Plan will be adopted.**

The record now presents the *anomalous situation* where fees were allowed to attorneys based on the theory that their services were *beneficial* to the Reorganization Plan when the *entire Plan was set aside.*

There is no other appeal pending from the entire Order allowing the fees, except the appeal of these Petitioners. If this Court concludes that under section 77 compensation may be allowed, even where the services did not contribute to the adoption of the Plan, *then the Order on fees* should be reversed only as to the Petitioners. On the other hand, if this Court should conclude that no fees may be allowed when the services did not contribute to the adoption of the Plan, *it follows that the entire Order must be reversed.*

We are submitting together with this Motion a certified copy of the Opinion rendered by the Seventh Circuit.

For the foregoing reasons we ask this Court to consider the Opinion, to grant a rehearing and to allow the Writ of Certiorari.

Respectfully submitted,

MEYER ABRAMS,
*Counsel for Petitioners.*

Dated at Chicago, Illinois,
December 5, 1941.

Office - Supreme Court, U. S.
FILED
NOV 28 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

## No. 631

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

DEBTOR.

ISRAEL A. ABRAMS, ET AL., ETC.,

*Petitioners,*

*vs.*

HENRY A. SCANDRETT, WALTER J. CUMMINGS AND GEORGE I. HAIGHT, TRUSTEES OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

*Respondents.*

**ANSWER TO PETITION FOR REHEARING.**

A. N. WHITLOCK,
*Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Respondents.*
888 Union Station,
Chicago, Illinois.

Dated November 26, 1941.

THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

---

**No. 631.**

---

IN THE MATTER OF
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

DEBTOR.

---

ISRAEL A. ABRAMS, ET AL., ETC.,

*Petitioners,*

*vs.*

HENRY A. SCANDRETT, WALTER J. CUMMINGS AND GEORGE I. HAIGHT, TRUSTEES OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

*Respondents.*

---

## ANSWER TO PETITION FOR REHEARING.

---

In this case Petition for Certiorari was denied by this Court on November 10, 1941. Thereafter, Petitioners filed herein a Petition for Rehearing. In answer to said Petition for Rehearing Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Respondents herein, respectfully submit that said Petition presents no matter of substance which was not presented to the Court by the Petition for Certiorari and the brief of Respondents in opposition thereto, cites no authorities which are inconsistent with the conclusions

heretofore reached in this case, presents no new or additional ground for granting certiorari and is wholly without merit. Their discussion of the questions presented, therefore, will be very brief.

The Petitioners seize upon the phrase "vested rights" and call attention to that portion of the opinion of the Court below in which that phrase is used. The Court makes it clear in that portion of the opinion that the right to allowances payable from the estate in bankruptcy proceedings is statutory; that Congress could withhold such right entirely or could grant it subject to maximum limits fixed by the Commission. In the absence of statute, no such right exists, vested or otherwise. Admittedly, Petitioners in this case must rely solely upon their rights under the statute. They now urge that in the pending North Western appeal, not yet heard, (case below *Re Chicago & North Western Railway Company*, 35 Fed. Supp. 230, 258) one of the appellants is a Mortgage Trustee and in its brief it claims that its right to an allowance in excess of the maximum fixed by the Commission exists by virtue of the provisions of the mortgage there involved and complains of the holding of the District Court that in such case the limitation imposed by Section 77 (c) (12) applies to allowances for services and expenses in connection with the proceeding and plan. If Counsel for the Petitioners were representing the Mortgage Trustee, appellant in that case, it would be understandable that he might urge that the provision in the mortgage for fees and expenses strengthened his position, but we are at a loss to understand how the possibility of such a contention lends any support to Petitioners in this case. The North Western decision by the District Court was brought to the attention of this Court in our brief in opposition to the Petition for Writ of Certiorari (p. 13). That decision is in every way consistent with the decision in this case. In both cases the Court clearly holds that such allowances are governed by

Section 77 (c) (12). In the North Western case the District Court, in discussing the claim of this same Mortgage Trustee, said:

> "The Court is satisfied that it has no power to make allowances for compensation for services compensable under the statute aforesaid in excess of the maximum allowances fixed by the Interstate Commerce Commission, whether such excess be payable out of the mortgaged property only or from other sources. Whether, if a mortgage trustee or its counsel earned compensation under the terms of the mortgage for service which was not compensable under the statute aforesaid, the Court would have power to make an allowance payable from some source, is a question which it is unnecessary to decide on the present record." *In re Chicago & North Western Railway Company*, 35 Fed. Supp. 230, 258.

We are at a loss to understand why Petitioners cite the case of *Dismuke* v. *United States*, 297 U. S. 167. Insofar as that case is pertinent to the controversy here involved, its holding is clearly contrary to Petitioners' contention. The Court was there dealing with a claim against the United States and points out that the United States may withhold all remedy or may provide an administrative remedy and make it exclusive. The case, therefore, presents a clear analogy to this case where Congress, having the right to withhold any allowance, may provide for allowances within maximum limits fixed by the Interstate Commerce Commission.

Counsel for Petitioners again suggests that the action of the Commission was arbitrary. The Commission's findings were made upon a full record, the material portions of which were brought to the Circuit Court of Appeals by the Petitioners here, and the Circuit Court of Appeals, in its opinion, said:

> "The Commission did not find that no services were rendered; it found that they were of no value to the estate. If the services were of no value, it cannot be

said that the refusal of allowance to appellants was arbitrary or capricious." *Abrams* v. *Scandrett*, 121 Fed. (2nd) 371, 376.

Counsel for the Petitioners insists upon ignoring both the rule of the statute that allowances must be within maximum limits fixed by the Commission and the finding made by the Commission, clearly supported by the evidence, that Petitioners rendered no service of value to the estate. The Courts have had no difficulty in interpreting the statute. Its meaning is clear and no diversity of opinion upon the part of the Courts with reference thereto exists. All questions involved were fully presented in the briefs heretofore filed by the parties and there would seem to be no justification for burdening the Court with further discussion.

Respondents respectfully submit that the Petition for Rehearing should be denied.

Respectfully submitted,

A. N. WHITLOCK,
*Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Respondents.*
888 Union Station,
Chicago, Illinois.

Dated November 26, 1941.